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ABSTRACT

A major factor hindering women's human rights has been cultural attitudes based on stereotypical beliefs on the role of women in society, which have resulted in women being denied access to education, health care, property, employment, or involvement in decision-making. This report examines and compares some of the issues affecting the well-being and development of women and children addressed under specific articles of the United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), and the Organization of American States' Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women. The report addresses the following areas of concern: (1) "Cultural Patterns and Traditional Practices"; (2) "Parental Responsibility"; (3) "Sexual Exploitation and Prostitution"; (4) "Nationality"; (5) "Education"; (6) "Employment"; (7) "Health Care"; (8) "Culture and Recreation"; (9) "Movement of Persons"; (10) "Family Relations"; and (11) "Violence." The comparison concludes that the three treaties complement each other, and together constitute an effective mechanism for enforcing the human rights of women and children. However, they have strengths and weaknesses individually and collectively and rely on international cooperation and adherence to the obligations and rights stated therein. (SD)

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THE SYNERGY OF "RIGHTS" CONVENTIONS: THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) THE CONVENTION ON THE RIGHTS OF THE CHILD (CRC) THE INTER-AMERICAN CONVENTION ON THE PREVENTION, PUNISHMENT AND ERADICATION OF VIOLENCE AGAINST WOMEN (THE CONVENTION OF BELEM DO PARA)

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by

JUSTICE DESIREE BERNARD, C.C.H.
GUYANA

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On 18th December, 1979 the General Assembly of the United Nations adopted the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as "CEDAW') which represented the culmination of years of preparatory work and lobbying by members of the Commission on the Status of Women. CEDAW became the vehicle to promote the advancement of women and recognition of their human rights in all fields of development. It urges governments to take appropriate measures to eliminate all forms of discrimination against women. In 1979 ninety-three (93) countries ratified or acceded to CEDAW; today nearly seventeen (17) years later the number has risen to over 150.

On 20th November, 1989 ten (10) years later the General Assembly of the United Nations recognising that the Universal Declaration of Human Rights proclaims that childhood is entitled to special care and assistance, adopted the Convention On the Rights of the Child (hereinafter referred to as "CRC") applicable to all children below the age of eighteen (18) years. CRC seeks to preserve and safeguard the human rights of

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children, and urges States parties to take appropriate measures to ensure protection of children against all forms of discrimination or punishment. To date over 186 countries have ratified or acceded to it.

On 9th June, 1994 the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women (hereinafter referred to as "the Belem do Para Convention") was adopted by acclamation at the 24th regular session of the General Assembly of the Organisation of American States. The adoption of this Convention demonstrated the commitment of the countries mainly from Latin America to revise their laws to ensure specific solutions to the problems of physical and psychological violence encountered by women.

CEDAW AND CRC impose on States parties obligations to undertake all appropriate legislative and other measures to ensure the implementation of the rights recognised in the treaties. Specific issues affecting the well-being and development of women and children are addressed under specific articles of both conventions, and I shall attempt an examination and comparison of some of these issues. The Belem do Para Convention concerns the problem of violence, and comparisons with the other two conventions will be addressed separately.

CULTURAL PATTERNS AND TRADITIONAL PRACTICES

A major factor hindering women's full enjoyment of their human rights has always been cultural attitudes based on

stereotypical beliefs of the role of women in society. These beliefs and attitudes have resulted in women being denied access to education, health care, property, employment or involvement in decision-making. The traditional thinking that informs these attitudes is that women were created for the roles of child-bearing and child-rearing as well as catering to the needs of their male family members.

Traditional practices such as female genital mutilation and payment of dowries have resulted in the deaths of women, and in both instances the victims are invariably young. This necessarily brings both CEDAW and CRC into focus.

One criticism of CEDAW in relation to traditional practices is that it does not specifically urge States parties to take appropriate measures to eradicate these practices. CRC creditably addresses these practices in unambiguous language. The wording of the relevant articles of the two conventions is instructive. Articles 2(f) & 5(a) of CEDAW mandates States parties:

> Article 2(f): "to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women."
>
> Article 5(a): "to take all appropriate measures to modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for

men and women."

Article 24(3) of CRC reads as follows:

> "States parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children."

The differences and emphases in the relevant articles are apparent. Whereas CEDAW in both articles urges States parties to modify or abolish existing customs and practices and to modify the social and cultural patterns of conduct of men and women, CRC links the effect of traditional practices to the health of children. One such practice of genital mutilation decidedly affects the health of women adversely, but this has not been addressed in the aforementioned articles of CEDAW or under Article 12 where health issues are considered.

A possible explanation for the difference in approaches to these practices in the two conventions is that CEDAW was drafted ten (10) years earlier than CRC when presumably the impact and severity of traditional practices on the lives of women were not taken seriously and did not attract world-wide attention. The Committee on the Elimination of Discrimination Against Women at its 9th Session in 1990 adopted General Recommendation No. 14 requesting States parties to include in their reports measures taken to eradicate female circumcision.

PARENTAL RESPONSIBILITY

Article 5(b) of CEDAW exhorts States parties to take all appropriate measures to ensure recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

This was again emphasised in Article 16(d) which seeks to eliminate discrimination against women in all matters relating to marriage and family relations by according to all parents irrespective of their marital status the same rights and responsibilities in matters relating to their children, the interests of the children being paramount.

Article 18(1) of CRC mirrors the sentiments expressed in CEDAW by urging States parties to use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child, and reiterates the primary responsibility of parents or legal guardians for the upbringing and development of the child, the best interests of the child being their basic concern.

It is recognised that mainly because of economic constraints on the family income many women are compelled to combine family obligations with working outside of the home. This brings into focus the need for child care facilities, and Article 11(2)(c) of CEDAW seeks to encourage the provision of

the necessary supporting social services to enable parents to combine family obligations with work responsibilities in particular through promoting the establishment and development of a network of child-care facilities.

Articles 18(2) & (3) of CRC do not only mandate States parties to render appropriate assistance to parents and guardians in the performance of their child-rearing responsibilities by ensuring the development of child-care institutions and facilities, but also confer on children of working parents the right to benefit from such child-care services for which they are eligible.

SEXUAL EXPLOITATION AND PROSTITUTION

Throughout the years women have always been victims of sexual exploitation, but in recent times young girls as well as boys are consistently abused. The incidents of sexual exploitation of children are on the rise, and attract world-wide attention. Like CEDAW, CRC exhorts States parties to protect children from all forms of sexual exploitation and abuse as well as the exploitative use of children in pornographic performances and materials.

The relevant provision in CEDAW is Article 6 which requests States parties to take measures including legislation to suppress all forms of traffic in women and exploitation of prostitution of women.

CRC devotes three articles to this problem, and

because of their importance I shall set them out in toto:

Article 34: "States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

(a) The inducement or coercion of a child to engage in any unlawful sexual activity;

(b) The exploitative use of children in prostitution or other unlawful sexual practices;

(c) The exploitative use of children in pornographic performances and materials."

Article 35: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form."

Article 36: "States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare."

A significant feature of these articles is that the measures which States parties are urged to implement are not to be confined to the national level but extends beyond which suggests that States can enter into arrangements with other States in implementing measures to eradicate the sexual exploitation of children. This is commendable, but a sad omission in CEDAW presumably due to the fact that women are regarded as being capable of taking care of themselves. It is hoped that

States will avail themselves of these provisions in an effort to to remove this scourge from our midst.

NATIONALITY

Article 9 of CEDAW addresses the issue of nationality and accords women the right to acquire, change or retain their nationality on equal footing with men. It also accords women equal rights with men with respect to determining the nationality of their children.

The corresponding article in CRC (Article 7) grants to every child the right to acquire a nationality, and, as far as possible, the right to know and be cared for by his or her parents.

Under the relevant articles of both conventions States parties are enjoined to ensure that no change of nationality under any law or otherwise renders the mother or child stateless, and all steps should be taken to preserve an acquired nationality.

Experience has shown that equal treatment is not always accorded women in the conferring of their nationality on foreigners whom they marry. The nationality laws of many countries do not permit the foreign husbands of female nationals to acquire their nationality in the same way as the foreign wives of male nationals. Similarly even though all children born during a marriage automatically acquire the nationality of their

fathers, in some countries children born to a foreign mother do not acquire her nationality. The same difference is also evident in the laws governing change of nationality in some states.

One can only hope that in countries where there is this discrimination it will be removed in the forseeable future.

EDUCATION

Upon an examination of the relevant articles of both conventions dealing with the right to education (Article 10 of CEDAW and Article 28 of CRC) a common factor is the exhortation to States parties to ensure access to education at all levels to women and children. In this regard the rights of girl children to education are safeguarded under both conventions.

However, there is a significant difference between the provisions of the two conventions in that whereas CEDAW seeks to eliminate discrimination against women by according them equal access to career and vocational guidance as well as encouraging the elimination of stereotypical roles of men and women at all levels within the education system, CRC seeks to ensure that States parties make primary education compulsory and secondary and higher education accessible and available to all children; further, it seeks to ensure that States parties promote and encourage international cooperation in educational matters with a view to contributing to the elimination of ignorance and

illiteracy throughout the world, and in this regard particular account ought to be taken of the needs of developing countries.

Article 29 of CRC goes on to amplify the scope of education of children by directing it to the development of their personalities and talents as well as respect for human rights, fundamental freedoms and the natural environment. Education should also be aimed at preparing children for responsible life in a free society in the spirit of understanding peace, tolerance and equality of the sexes.

In the same spirit Article 17 of CRC addresses the role of the mass media in informing the minds of children, and States parties undertake to ensure that children have access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

Unfortunately all of this is not reflected in CEDAW which seeks only to eliminate discrimination, but does not direct attention towards the total development of women so that they can function as equal partners with men.

EMPLOYMENT

In order to maintain themselves and their families women are entering the workforce in ever-increasing numbers.

Article 11 of CEDAW seeks to ensure for them equal opportunities for employment and equal remuneration for work of equal value. It also seeks to ensure safe working conditions and protection of health as well as the right to social security and paid leave. It encourages the provision of necessary supporting social services.

All of these issues are addressed in Article 3(3) of CRC which ensures that institutions responsible for the care and protection of children conform to established standards in the areas of safety, health, suitability and competence of supervisory staff. Article 26 recognises the right of every child to benefit from social security, and Article 32 recognises the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education or to be harmful to his or her health or physical, mental, spiritual, moral or social development. It urges States parties to enact legislation to provide for a minimum age for admission to employment and to regulate the hours and conditions of employment.

HEALTH CARE

In CEDAW health care falls under the provisions of Article 12 in a very limited and restricted manner. It seeks to accord to women equal access with men to health care services. However, the general thrust of the Article is directed at women's reproductive function, and refers to the provision of appropri-

ate services in connection with pregnancy, confinement and the post-natal period as well as adequate nutrition during pregnancy and lactation. Other vital areas of women's health are not specifically addressed, and as mentioned earlier unlike CRC it does not link traditional practices such as genital mutilation to women's health.

By comparison Article 24 of CRC which deals with health care is detailed and comprehensive. Apart from recognising the right of every child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health, it urges States parties to strive to ensure that no child is deprived of his or her right of access to health care services, and exhorts them to pursue full implementation of this right and to take particular appropriate measures to diminish infant mortality, provide primary health care, combat disease and malnutrition, provide access to health education, and develop preventive health care, inter alia. Again as in other articles of CRC States parties are enjoined to promote and encourage international cooperation with a view to achieving the full realisation of the right to health care, and in this regard particular account shall be taken of the needs of developing countries.

CULTURE AND RECREATION

This aspect of life is considered under Article 13(c)

of CEDAW which ensures to women on an equal basis with men the right to participate in recreational activities, sports and all aspects of cultural life in the same way as Article 31 of CRC ensures to children the right to rest and leisure and to engage in play and recreational activities appropriate to their age as well as the right to participate fully in cultural and artistic life.

MOVEMENT OF PERSONS

Article 15(4) of CEDAW accords to women the same rights as men with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

This is complemented by Article 10 of CRC which grants to the child and his/her parents the right to leave and enter any country including their own. This right is linked inevitably to that of the parents due regard being paid to the need to maintain family relations and family reunification.

FAMILY RELATIONS

Article 16 of CEDAW ensures to women equal rights in all matters relating to marriage and family relations, and specifically under Articles 16(d)&(f) they are accorded the same rights and responsibilities as parents in matters relating to their children including guardianship and adoption, in all cases the interests of the children being paramount. Article 16(g)

grants the same personal rights to women and men to choose a family name, profession and an occupation.

These rights are linked in no small measure to the rights of children enshrined in CRC. Under Articles 7,8 & 9 a child shall have the right from birth to a name, the right to acquire a nationality, and as far as possible the right to know and be cared for by his/her parents as well as the right to preserve family and personal relations as recognised by law without unlawful interference. The issue of adoption and its effects are covered by Article 21.

Article 27 of CRC recognises the right of every child to an adequate standard of living, and places on parents or others responsible for the child the primary responsibility to secure within their abilities and financial capacities the conditions of living necessary for the child's development.

Another advantage which CRC has over CEDAW is that Article 27(4) enjoins States parties to take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child both within the State party and abroad, and to assist in this regard States parties are urged to promote the accession to international agreements. This is most commendable, and if implemented will assist in no small measure the most difficult task women face in seeking to enforce maintenance orders against defaulting fathers.

As far as can be ascertained from an examination of the provisions of CRC the marriage of a child has not been addressed with no stipulations governing the minimum age at which a marriage can be contracted. However, this omission is compensated for by the provision in Article 16(2) of CEDAW which is to this effect:

> "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

This applies to all children regardless of gender, and is yet another example of the complementary relationship between CEDAW and CRC.

VIOLENCE

Another area which unfortunately is not addressed by CEDAW but which women face every day of their lives in every part of the world is the horrible trauma of violence whether physical, psychological or sexual. Fortunately the framers of CRC wisely sought to protect children from this scourge under Article 19 which expressly exhorts States parties:

> "to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any

other person who has the care of the child."

The Committee on the Elimination of Discrimination Against Women recognising the lacuna in CEDAW and after examination of reports of States parties from all geographical regions of the world over a period of ten years expressed its concern over the ever-increasing incidence of violence by adopting two General Recommendations (No. 12 adopted at its eighth session in 1989 and No. 19 adopted at its eleventh session in 1992). In the later recommendation the Committee concluded that "not all the reports of States parties adequately reflected the close connection between discrimination against women, gender-based violence, and violations of human rights and fundamental freedoms". The multi-faceted recommendation inter alia urges States parties in their reports to identify the nature and extent of attitudes, customs and practices that perpetuate violence against women, and the measures taken to overcome violence including all available data on the incidence of such violence.

At this juncture I think it apposite to introduce the Inter-American Convention on the Prevention, Punishment and Eradication of Violence (hereinafter referred to as "The Belem Do Para Convention") which was adopted by acclamation on 9th June, 1994 by the General Assembly of the Organisation of American States in Belem do Para, Brazil. The adoption of this convention demonstrated the commitment of the countries mainly of Latin America to revise their laws to ensure specific

solutions to the problems of physical and psychological violence encountered by women.

Under Article 2 of the Belem do Para Convention violence against women is understood to include physical, sexual and psychological violence that occurs within the family or domestic unit whether or not the parties share the same residence or that occurs in the community, e.g. rape, torture, forced prostitution, kidnapping and sexual harassment in the workplace, educational and health facilities; it also includes violence perpetrated or condoned by the state or its agents regardless of where it occurs.

States parties recognise that violence against women prevents and nullifies the free and full exercise of their civil, political, economic, social and cultural rights. They condemn all forms of violence against women and agree to pursue by all appropriate means policies to prevent, punish and eradicate such violence.

An innovative provision for reparation for violence suffered by women is addressed in Article 7(g) under which States parties undertake to "establish the necessary legal and administrative mechanisms to ensure that women subjected to violence have effective access to restitution, reparation or other just and effective remedies". This is a welcome innovation, and it is hoped that States parties will give full effect to it by ensuring that procedures are established to which women victims of violence can have ready access.

The synergy of the Belem do Para Convention with CEDAW is exemplified by a comparison of Article 8(b) with Article 5(a) of CEDAW. Under both Articles States parties are exhorted to undertake appropriate and specific measures to modify social and cultural patterns of conduct of men and women with a view to eliminating or counteracting prejudices, customs and other practices which are "based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women". The only difference in the Articles is that th Belem do Para Convention urges States parties in modifying social and cultural patterns of conduct of men and women to include the development of formal and informal educational programmes appropriate to every level of the educational process, and it expresses the view that the idea of inferiority or superiority of either of the sexes and the stereotyped roles for men and women legitimise or exacerbate violence against women.

A commendable feature of Article 8 of the Belem do Para Convention is the emphasis on education and counselling for victims and perpetrators of violence as well as family members. Programmes are suggested for educating and training all those involved in the administration of justice, police and other law enforcement officers as well as programmes aimed at raising the awareness of the public to the problems of women subjected to violence. Rehabilitation of victims of violence is another commendable feature of the Convention with suggestions for the provision of readjustment and training programmes to enable them

to participate fully in the public, private and social life of their countries. Guidelines are also suggested for the media in order to project more positive images of women subjected to violence and to enhance and respect their dignity.

The Belem do Para Convention like CRC urges the fostering of international cooperation for the exchange of ideas and experiences as well as the execution of programmes aimed at protecting women who are victims of violence. In this way a network of information and programmes can be established as a multi-faceted assault on the scourge of violence with a view to eradicating it. It is a universal problem touching all societies whether developed or developing, and as such needs to be tackled in a concerted manner.

Both CRC and the Belem do Para Convention are of recent vintage when compared with CEDAW and this may account for the fact that they both make mention of particularly vulnerable groups of women and children the numbers of which have increased considerably within recent years, and are still on the rise. I refer to migrant, displaced and refugee women and children. Article 9 of the Belem do Para Convention requests States parties to take special account of the vulnerability of women to violence by reason of, among others, their race or ethnic background or their status as migrants, refugees or displaced persons. Article 22 of CRC mandates States parties to ensure that a child seeking refugee status or who is considered a refugee receives appropriate protection and humanitarian assistance in the enjoy-

ment of applicable rights set forth in CRC.

The Belem do Para Convention also urges consideration of women subjected to violence while pregnant or who are disabled, of minor age, elderly, socio-economically disadvantaged, affected by armed conflict or deprived of their freedom. The rights of the disabled child are given special consideration in Article 23 of CRC with States parties recognising that a mentally or physically disabled child should enjoy a full and decent life in conditions which ensure dignity and promote self-reliance.

With the meteoric rise in drug use and abuse by the young throughout the world and in an effort to combat drug trafficking Article 33 of CRC enjoins States parties to take all appropriate measures to protect children from the illicit use of narcotic drugs and psychotropic substances, and to prevent the use of children in the illicit production and trafficking of such substances.

CONCLUSION

I have attempted to highlight similarities and point out differences particularly between CEDAW and CRC, and some similarities with the Belem do Para Convention. These three treaties coimplement each other in no small measure, and together constitute an effective mechanism for enforcing the human rights of women and children as well as a formidable bulwark against

their infringement.

They have their strengths and weaknesses individually and collectively. CEDAW in particular has omitted several areas where women encounter discrimination, and the emphasis on certain aspects of a woman's life has been overplayed. However, in spite of these weaknesses the Conventions are inextricably linked as women and children are biologically. Discrimination suffered by a woman inevitably impacts negatively on the well-being of her children.

It is hoped that States parties to all of the conventions will honour their obligations and undertakings expressed in the conventions, and that the suggestions of international cooperation on specified issues will be put into effect thereby ensuring to women and children throughout the world enjoyment of their rights guaranteed under the Universal Declaration of Human Rights and the Charter of the United Nations.

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